

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAVELLE FOX,

*Plaintiff,*

**DECLARATION**

-against-

15-cv-00390

SUPERINTENDENT LEE, et al.,

TJM/CFH

*Defendants.*

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Lynn Knapp Blake, on the date noted below and pursuant to §1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am an attorney duly licensed to practice law in the State of New York, and admitted to practice in the Northern District of New York.
2. I am an Assistant Attorney General of counsel in this matter to Barbara D. Underwood, Acting Attorney General of the State of New York, attorney for the Defendants.
3. I make this declaration in support of the Defendants' motion for summary judgment pursuant to Rule 56 of the FRCP, seeking dismissal of this action in its entirety upon the grounds that Plaintiff has failed to exhaust his administrative remedies. In the alternative, in the event that the motion is denied, the Defendants request an exhaustion hearing.
4. Attached hereto as Exhibit A is a true copy of Plaintiff's deposition transcript.

5. Attached hereto as Exhibit B is a true copy of the complaint in a prior action brought by Plaintiff, Fox v. Labatte, 9:15-cv-00144 (LEK/DJS) filed on February 10, 2015 (hereinafter "Fox 1").

6. Attached hereto collectively as Exhibit C are true copies of the Report-Recommendation and Order and Decision and Order issued in Fox 1 which dismissed the action based upon Plaintiff's failure to exhaust his administrative remedies.

7. Attached hereto as Exhibit D is a true copy of the Declaration of Jeffrey Hale dated May 13, 2015 which was submitted in support of the Defendant's motion for summary judgment in Fox 1.

8. Attached hereto as Exhibit E is a true copy of the Declaration of Thomas Mauro dated May 15, 2015 which was submitted in support of the Defendant's motion for summary judgment in Fox 1.

WHEREFORE, the Defendants respectfully request that the Court issue an Order granting the Defendants' motion for summary judgment and dismissing this action in its entirety, together with such other and/or further relief that the Court deems just and proper. In the alternative, in the event that the motion is denied, the Defendants request an exhaustion hearing.

Dated: May 21, 2018  
Albany, New York

Lynn Knapp Blake  
Lynn Knapp Blake  
Bar Roll No. 507430